



UNITED STATES PATENT AND TRADEMARK OFFICE

87
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,852	05/11/2001	Everett R. Geis	2066.0060001	7238

7590 05/19/2003

BROBECK, PHLEGER & HARRISON, LLP
12390 El Camino Real
San Diego, CA 92130

EXAMINER

MASIH, KAREN

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 05/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/853,852	GEIS ET AL.
	Examiner karen masih	Art Unit 2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-231 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-231 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Art Unit: 2837

1. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim1-231 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-231 presented are undue multiplicity. An unreasonable number of claims, that is , unreasonable in view of the nature and scope of Applicant's invention and the state of the art, may afford a basis for rejection on the grounds of multiplicity. A rejection on this ground should include all the claims in the case inasmuch as it relates to confusion on the issue. See MPEP 2173.05(n).

4. The number of claims believed sufficient to properly define Applicant's invention is 44. Applicant should select claims 1-44 for examination on the merits.

5. The declaration filed September 24, 2001 does not comply with 37 CFR 1.63 because it refers to the specification attached thereto. The specification was filed on May 11, 2001 before the filing of the signed declaration.

6. The amendment adding claims 26 through 231 is in improper format because the claims are not underlined as required by 37 CFR 1.173(d). Also , the amendment is not accompanied by "an explanation of the support in the disclosure of the patent for the

changes made to the claims " as required under 37 CFR 1.173©. Further, the amendments to the specification and to the claims have not been entered .

7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to karen masih whose telephone number is 703-308-3108. The examiner can normally be reached on m-f 8.30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, robert nappi can be reached on 703-308-3370. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3431 for regular communications and 703-305-3431 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-3080956.



karen masih
Primary Examiner
Art Unit 2837

KM
May 13, 2003